NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ARIZONA LONG-TERM CARE SYSTEM

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2389.)

[R12-174]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action:**

R9-28-702	New Section
R9-28-703	New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute:	A.R.S. §§ 36-2999.54 and 36-2903
Implementing statute:	A.R.S. §§ 36-2999.52 and 36-2999.54

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 18 A.A.R. 2370, September 28, 2012 *(in this issue)*

4. The agency's contact person who can answer questions about the rulemaking:

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSRules@azahcccs.gov
Web site:	www.azahcccs.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. § 36-2999.52 authorizes the Administration to administer a provider assessment on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. The Administration is proposing rule to delineate the method for imposing the assessment, the criteria for qualifying for supplemental payments, and the method for determining the amount of supplemental payments.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied upon when revising these regulations.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

The Administration anticipates a minimal to moderate economic impact to individual qualifying nursing facilities. Under the statute, the amount of the assessment cannot to exceed three and one-half percent of the net patient service revenue. The estimated amount of the aggregate assessment for the fiscal year ending September 30, 2013 is $18M. Ninety nine percent of the funds will be used as the non-federal share of supplemental payments to qualifying nursing facilities through the Medicaid program administered by AHCCCS. Because those funds will be matched with federal funds, the estimated amount of the aggregate supplemental payments for the fiscal year ending September 30, 2013 is $50M.

Minimal = less than $200,000

Moderate = $200,000 to $400,000

High = $400,000 or over

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSRules@azahcccs.gov
Web site:	www.azahcccs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of September 10, 2012. Please send written or e-mail comments to the above address by the close of the comment period, 5:00 p.m., October 29, 2012.

Date:	October 29, 2012
Time:	3:00 p.m.
Location:	AHCCCS 701 East Jefferson Phoenix, AZ 85034
Nature:	Public Hearing

Date:	October 29, 2012
Time:	3:00 p.m.
Location:	ALTCS: Arizona Long-term Care System 1010 N. Finance Center Dr, Suite 201 Tucson, AZ 85710
Nature:	Public Hearing

Date:	October 29, 2012
Time:	3:00 p.m.
Location:	2717 N. 4th St. STE 130 Flagstaff, AZ 86004

Nature: Public Hearing

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rule must conform to the requirements of 42 U.S.C. § 1396b(w) and the implementing federal regulations found at 42 C.F.R. Part 433, Subpart B. An assessment or supplemental payments that do not meet federal requirements would result in a reduction in federal financial participation in the Medicaid program administered in Arizona. As indicated in the statute, federal approval for the assessment and the supplemental payments is required. As such, the rule will not exceed the parameters of federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 7. STANDARDS FOR PAYMENTS

Section
R9-28-702. ~~Repealed~~ Nursing Facility Assessment
R9-28-703. ~~Repealed~~ Nursing Facility Supplemental Payments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. ~~Repealed~~ Nursing Facility Assessment

A. For purposes of this Section, in addition to the definitions under A.R.S. 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

"Assessment year" means the 12 month period beginning October 1st each year.

"Nursing Facility Assessment" means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

"Medicaid days" means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS' claim and encounter data.

"Medicare days" means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.

C. All nursing facilities licensed in the state of Arizona will be subject to the provider assessment except for:

1. A continuing care retirement community,
2. A facility with 58 or fewer beds,
3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded, or
4. A tribally owned or operated facility located on a reservation.

D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities:

1. AHCCCS shall utilize each nursing facility's UAR submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide AHCCCS with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by AHCCCS, AHCCCS shall determine the assessment based on the information available.
2. For each nursing facility, other than noted in subsection (D)(3), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by $7.50.
3. For a nursing facility with fewer annual Medicaid days than the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by $1.00.
4. The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).
5. The assessment calculated under subsections (D)(2), (D)(3) and (D)(4), shall not exceed 3.5 percent of aggregate net patient service revenue of all assessed providers.
6. AHCCCS will forward the provider assessment by facility to the Department of Revenue by September 1st preceding the assessment year.

R9-28-703. ~~Repealed~~ Nursing Facility Supplemental Payments

A. On an annual basis, AHCCCS shall determine the total funds available in the nursing facility provider assessment fund available for supplemental payments by:
1. Estimating the nursing facility assessments computed for the upcoming assessment year,
2. Subtracting one percent of the total estimated assessments, and
3. Applying the appropriate federal matching assistance percentage (FMAP) to the difference of subsections (A)(1) and (A)(2).

B. AHCCCS shall calculate each year's quarterly supplemental payments to each nursing facility with Medicaid utilization, excluding ICFMRs, by:
1. Determining each facility's proportion of Medicaid resident bed days to total nursing facility Medicaid resident bed days by utilizing adjudicated claims and encounter data for the most recent 12 month period, including appropriate claims lag.
2. Multiplying subsections (B)(1) and (A)(3).
3. Dividing the payments determined under subsection (B)(2) by four quarterly payments.

C. AHCCCS and its contractors shall make quarterly supplemental payments to nursing facility providers.

D. Following the end of each assessment year, AHCCCS shall reconcile the supplemental nursing facility payments made during the assessment year to the annual deposits to the nursing facility assessment fund for the same year less one percent of the actual assessments deposited in the fund plus federal matching funds. The proportion of each nursing facility's Medicaid resident bed days shall be used to calculate the reconciliation amounts. AHCCCS and its contractors shall make additional payments to or recoupments from nursing facilities based on the reconciliation.

E. Aggregate supplemental payments to nursing facilities shall not exceed upper payment limits established under 42 CFR 447.272.

F. A facility must be open on the date the supplemental payment is made in order to receive a payment.